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Sup. ct

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. [redacted] Original [redacted]

STATE OF NEW JERSEY,

Plaintiff,

vs.

STATE OF NEW YORK and THE CITY OF NEW YORK,

Defendants.

Motion for Leave to File Bill of Complaint and Bill of Complaint.

WILLIAM A. STEVENS,
Attorney-General.

DUANE E. MINARD,
Assistant Attorney-General,
Solicitors for Plaintiff.

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

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Notice.

IN THE SUPREME COURT OF THE UNTED STATES.

October Term, 1928.

No. , Original.

STATE OF NEW JERSEY,
Plaintiff,

vs.

STATE OF NEW YORK and THE CITY OF NEW YORK,
Defendants.

NOTICE.

TO:

Hon. Franklin D. Roosevelt, Governor, and
Hon. Hamilton Ward, Attorney-General, of the State of New York.
Hon. James J. Walker, Mayor, and
Hon. Arthur J. W. Hilly, Corporation Counsel, of the City of New York.

SIRS:

Please be advised that on Monday, May 13, 1929, the plaintiff will apply to the Court for leave to file its bill of complaint, a copy of which is annexed hereto.

WILLIAM A. STEVENS,
Attorney-General,

DUANE E. MINARD,
Assistant Attorney-General,
Solicitors for Plaintiff.

Dated: May 1, 1929.

Motion.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1928.

No. , Original.

STATE OF NEW JERSEY, *Plaintiff,*

vs.

STATE OF NEW YORK and THE CITY OF NEW YORK, *Defendants.*

IN EQUITY.

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT.

Comes now the State of New Jersey, by its Attorney-General, and asks leave of the Court to file its bill of complaint herewith submitted.

WILLIAM A. STEVENS,
Attorney-General,

DUANE E. MINARD,
Assistant Attorney-General,
Solicitors for Plaintiff.

May 13, 1929.

Statement.

The purpose of this suit is to enjoin the threatened diversion within the State of New York of the waters of five tributaries of the Delaware River into another watershed for the use and benefit of the City of New York, in violation of the rights of the plaintiff and its citizens in, upon and along Delaware River and Delaware Bay, below the point of diversion.

WILLIAM A. STEVENS,
Attorney-General,

DUANE E. MINARD,
Assistant Attorney-General,
Solicitors for Plaintiff.

May 13, 1929.

Proof of Mailing Notice.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1928.

No. , Original.

STATE OF NEW JERSEY,
Plaintiff,

vs.

STATE OF NEW YORK and THE CITY OF NEW YORK,
Defendants.

PROOF OF MAILING COPIES OF MOTION AND BILL OF COMPLAINT.

STATE OF NEW JERSEY,
COUNTY OF ESSEX. } *ss.*

Vera E. Castellano, of full age, being duly sworn according to law, on her oath deposes and says:

1. On May 6, 1929, in the Post Office in the City of Newark, New Jersey, I deposited in a sealed envelope, with first class postage thereon by registered mail prepaid, a true printed copy of the annexed motion, notice and bill of complaint addressed to each of the following persons and addresses:

Hon. Franklin D. Roosevelt, Governor, of the State of New York, Albany, N. Y.

Hon. Hamilton Ward, Attorney-General, of the State of New York, Albany, N. Y.

Hon. James J. Walker, Mayor, of the City of New York, City Hall, Borough of Manhattan, New York City, N. Y.

Proof of Mailing Notice.

Hon. Arthur J. W. Hilly, Corporation Counsel, of the City of New York, Municipal Building, Borough of Manhattan, New York City, N. Y.

VERA E. CASTELLANO.

Sworn and subscribed before me
this 6th day of May, 1929.

JOHN J. GAFFEY.
Attorney at Law of N. J.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1928.

No. , Original.

STATE OF NEW JERSEY, *Plaintiff,*

vs.

STATE OF NEW YORK and THE CITY OF NEW YORK, *Defendants.*

BILL OF COMPLAINT.

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The plaintiff, State of New Jersey, by its Attorney-General, brings this suit against the defendants, State of New York and The City of New York, and alleges and shows:

I.

Plaintiff is a State, having its Capital and seat of government at the City of Trenton, Mercer County, New Jersey, and exercises through its Legislature the powers and duties of sovereignty within its territorial limits under and by virtue of its constitution, including the power and duty to protect and preserve to its citizens certain natural and inalienable rights, including the acquisition, possession and protection of property. This suit is instituted by direction of the Legislature of the

plaintiff and with the approval of the Governor thereof. Annexed hereto as Exhibit "A" and made a part hereof is a map showing certain geographical and other information referred to in this bill of complaint.

2. The defendant, State of New York, is a State, having its Capital and seat of government in the City and County of Albany, New York, and exercises through its Legislature the powers and duties of sovereignty within its territorial limits under and by virtue of its constitution.

3. The defendant, The City of New York, is a body politic and corporate, organized and existing under and by virtue of the laws of the State of New York, under which it exercises the powers of local administration and government as a political subdivision of said State, having its seat of government in the Borough of Manhattan, in the City, County and State of New York.

II.

4. The jurisdiction of this court depends upon the ground that this is a suit in which a state is a party, within the provisions of Article III, Section 2, of the Constitution of the United States.

III.

5. The Delaware River is an interstate stream rising in the State of New York, and constituting the boundary between the Commonwealth of Pennsylvania and the State of New York from a point near Deposit, New York, to a point near Port Jervis, New York, known as Tri-State Rock, where the northwest corner of the State of New Jersey joins a corner of the State of New York on said river. From Tri-State Rock southwardly, to a point near Chester, Pennsylvania, said river constitutes the boundary

between the Commonwealth of Pennsylvania and the State of New Jersey.

6. From said point near Chester, Pennsylvania, southwardly to Atlantic Ocean, said river and Delaware Bay constitute the boundary between the State of New Jersey and the State of Delaware.

7. In the State of New York, the Delaware River has certain tributaries, known as Neversink River, Willowemoc River, Beaver Kill, East Branch and Little Delaware River—(hereinafter referred to as the tributaries in question) draining an area of 610 square miles, which is the particular watershed in question in this suit.

8. Said Delaware River has been, historically, and still is, navigable and navigated for the transportation of persons and freight and for the pursuits of fishing, hunting and pleasure. From the Town of Deposit, in Broome County, New York, southward to its mouth, for a distance of 245 miles, said river is navigable during bankfull or highwater stages for the transportation of farm and forest products from the entire Delaware River Valley to the cities of Phillipsburg, Trenton, Burlington and Camden, New Jersey, and Easton, Bristol, Philadelphia and Chester, Pennsylvania, and other cities on the Delaware Bay and adjacent coastal ports.

9. From the mouth of said Delaware River northwardly to the City of Trenton, a distance of about 70 miles, said river is a tidal stream and is navigable in fact and at common law, and now carries interstate and foreign commerce of upwards of 5½ million tons annually; approximating in volume the entire commerce of the New York Barge Canal System. Said river is also an inland waterway necessary for the common defense of the nation in times of war.

10. Upon this tidal section the Government of the United States has expended $750,000 to provide a navigable channel 12 feet deep. On the recommendation of the War Department and the Army Engineers, Congress, at the last session, appropriated and made available (House Document No. 228) the sum of $1,350,000 to defray the cost of deepening the channel to 20 feet. Under present conditions, with a project depth of 12 feet, the navigable depth of the improved channel within and adjacent to the city of Trenton will at times be reduced by the proposed diversion hereinafter mentioned to the extent of one-half foot or more.

11. From the City of Trenton northward to Port Jervis, New York, a distance of 120 miles, said Delaware River is not a tidal stream but is navigable in fact during bank-full and highwater stages and is capable, by entirely feasible and practicable means and at reasonable cost, of being improved so as to make it navigable at all water stages.

12. The diversion, hereinafter mentioned, will lower the water level and reduce the depth of water in the channel of the non-tidal portion of the Delaware River, within the territorial limits of the plaintiff, at ordinary and medium stages of the stream below full-bank stage by amounts ranging from four to eight inches and, at times, more.

13. Between the Atlantic Ocean and the City of Trenton, the bed of said bay and river, from the center of the channel thereof to the highwater mark on the New Jersey shore, is owned in fee simple by the plaintiff, except such portions thereof as it may have conveyed to its citizens for the erection of docks, wharves and piers and other industrial or commercial uses. From Trenton to the northern boundary of the State, the bed of the

stream, between the centre of the channel thereof and the New Jersey shore, is owned by citizens of the plaintiff who are the riparian proprietors, subject only to the easement of the public to use said river as a public highway.

14. The plaintiff is the riparian proprietor of 23.33 acres of land in the City of Trenton, located on and extending to and, for a distance of 450 feet along, the centre of the channel of said Delaware River, used and occupied since November 25, 1790, by its Capitol building and other structures, as the seat of government of the plaintiff.

15. The plaintiff is also riparian proprietor of 292 acres of land in the Township of Ewing, Mercer County, New Jersey (known as Washington's Crossing), located on and extending to and, for a distance of 2,000 feet along, the centre of the channel of said river, which land, together with the buildings and other structures thereon, are used by its citizens as a public recreation park.

16. The State of New Jersey originally adopted, and still maintains the rule of the common law with respect to the rights of raparian proprietors along, in and to waters and water courses. The legislative policy of the plaintiff has been and is to preserve and administer its water rights for the benefit of its people, to whom by right of proximity and sovereignity they naturally belong. The citizens of plaintiff who are riparian proprietors along the Delaware River have vested property rights in the water of the stream and the right to enjoy it without diminution or alteration, growing out of the ownership of the soil, which rights are as carefully protected by law as the soil itself. The same common law rule was adopted and is in force in the State of New York and the Commonwealth of Pennsylvania.

17. Within the territorial limits of the plaintiff there are located upon and along said Delaware River the fol-

lowing municipal subdivisions of the plaintiff which rely chiefly upon the river for their economic and commercial prosperity:

Municipal Subdivisions	Population 1920	Economic Activities
(Tidal Section)		
Bridgeton	18,000	Industrial and Shipping
Salem	7,435	" "
Penns Grove	6,060	" "
Gibbstown	1,600	" "
Woodbury	5,801	County Seat
Gloucester City	14,700	Industrial and Shipping
Camden	135,000	" "
Riverton	2,341	" "
Palmyra	3,834	" "
Riverside	4,010	" "
Delanco	762	Residential
Beverly	2,562	"
Edgewater Park	235	"
Burlington	13,000	Industrial and Shipping
Roebling	2,800	" "
Bordentown	4,731	" "
Trenton (and environs)	175,000	" "
(Non-Tidal Section)		
Lambertville	4,660	Industrial
Stockton	519	"
Frenchtown	1,104	"
Milford	656	"
Riegelsville	510	"
Phillipsburg	16,923	"
Belvidere	1,793	"
Columbia	213	Residential

18. The City of Trenton was founded in 1679 and for more than a century has obtained its municipal water supply from the Delaware River. It has invested in its water works and water supply system more than $3,705,000 and, under the flowage conditions that have prevailed in said river during the past century, it has a permanent adequate supply of suitable water. The present use of water from said river ranges from a maximum of 21 million to a minimum of 16 million gallons per day.

19. The defendant, The City of New York, under and by virtue of power and authority claimed by it to have been conferred by the legislature of the State of New York, has completed plans and lately announced its intention to immediately appropriate $1,000,000 for preliminary work, and to begin actual construction, before midsummer of the present year, of dams, embankments and other water-works, structures and appurtenances, of the ultimate cost of $272,587,000 to provide reservoirs for the impounding, and tunnels and aqueducts for the diversion to said City of the waters from the tributaries in question, as follows:

Stream	Storage at	Watershed Sq. Miles	Diversion (Gals. per Day)
Neversink	Curry	70	70,000,000
East Branch of Delaware	Downsville	370	370,000,000
Beaver Kill	Beaver Kill	60	60,000,000
Willowemoc	Parkston	60	60,000,000
Little Delaware	Delhi	50	40,000,000
		Total	600,000,000

20. The reservoirs and appurtenances and the tunnels and aqueducts proposed to be constructed by said City in and from the watershed in question will have a capacity sufficient to permit said city to impound and divert all, or substantially all, of the natural water yield or run-off from the 610 square miles area of said watershed.

21. The average water yield of the said watershed is at least 840 million gallons per day. This watershed represents approximately 10% of the entire Delaware River tributary area above tidewater at Trenton, but owing to the increased rainfall in this watershed, the amount of the water yield therefrom is approximately 12% of all the water yield of the entire Delaware River tributary area above tidewater at Trenton.

22. Said City has published a report of its chief water engineer in which it is represented that the present intention of the City is to take 600 million gallons per day, from the watershed in question, or 25% of all of the available water or run-off of the Delaware River originating in New York State. The following table shows the affect of such intention upon the present flow from the watershed in question into Delaware River:

EFFECT OF PROPOSED DIVERSIONS BY THE CITY OF NEW YORK ON THE FLOW OF THE DELAWARE RIVER AT THE POINTS OF DIVERSION AND AT TRI-STATE ROCK. MEASUREMENTS IN MILLION GALLONS PER DAY

Aver. Year 1915-1928, incl.	Neversink	Willowemoc	Beaver Kill	East Branch	Little Dela.	Total	Tri-State Rock
Natural Flow	111	95.4	95.4	507	60.5	869.3	4200
Diversion	70	60.0	60.0	370	40.0	600	600
Remaining Flow	41	35.4	35.4	137	20.5	269.3	3600
Loss	63.1%	62.9%	62.9%	73.0%	66.1%	69.0%	14.3%
Wet Year Ending Sept. 30, 1928							
Natural Flow	176	151	151	792	95.0	1365	7100
Diversion	70	60	60	370	40.0	600	600
Remaining Flow	106	91	91	422	55.0	765	6500
Loss	39.8%	39.7%	39.7%	46.7%	42.0%	44.0%	8.5%
Dry Year Ending Sept. 30, 1923							
Natural Flow	85.4	73.2	73.2	327	40.4	599.2	3060
Diversion	70.0	60.0	60.0	370	40.0	600.0	600
Remaining Flow	15.4	13.2	13.2	—43*	0.4	—0.8*	2460
Loss	82.0%	82.0%	82.0%	113.0%	99.0%	100.0%	19.6%

* Deficiency in Flow.

The proposed initial diversion of 600 million gallons of water per day will reduce the average flow in the Delaware River within the northern territorial limits of the State of New Jersey by not less than 16 per cent. At certain times the entire flow from the tributary area of 610 square miles proposed to be appropriated by the City of New York will be diverted and at such times the flow in

Delaware River will be reduced by not less than 25 per cent.

23. Within the drainage basin tributary to the fresh water portion of Delaware River above but not including the City of Trenton, there is a population exceeding 700,000. The greater portion of this population is located in municipalities and large communities on or closely adjacent to the Delaware River or its principal tributaries. The sewage and industrial wastes from these cities and communities is discharged, either directly or after treatment and purification, into the Delaware River and its tributaries. This sewage, together with industrial wastes of industries and the natural surface drainage, produced certain unavoidable and irremediable pollution of the stream. There is a permanent population in the region tributary to the Delaware River in the State of New York exceeding 80,000 and this is greatly augmented by a large summer population, particularly in the vicinity of the villages of Liberty and Monticello, N. Y., consisting mainly of residents of New York City. The natural drainage from the summer resort region enters the Delaware River and its tributaries, particularly Mongaup and Neversink Rivers. In order to provide sufficient oxygen and dilution to permit the use of the waters of the Delaware River for domestic, potable, commercial, industrial, navigation and other purposes within the state of New Jersey, it is necessary that the Delaware River shall receive at Tri-State Rock the full, undiminished flow from the less polluted tributaries, including the East and West Branches of the main stream, the Beaverkill and Willowemoc and Little Delaware Rivers, and that the pollution of the Neversink or other tributaries shall not be increased in concentration by the diversion of a portion of the waters therefrom.

24. The undiminished and unobstructed flow of the Delaware River at all normal and flood stages, and of all of the tributaries thereof are necessary for the dilution of said pollution and for purging said river, for the purposes aforesaid. A diminution or obstruction of the flow at any normal or flood stage, as proposed by said City, will prevent such dilution and purging and will inflict great and irreparable injury upon, and destruction of the property and legal rights of, the plaintiff and its citizens, and deprive them of their ancient common law right as riparian proprietors to the use and enjoyment of the waters of said river for the several purposes herein mentioned and will injure, destroy and impair the property and prosperity of the plaintiff and its citizens, and prejudice and menace the health of its inhabitants.

25. Within the territorial limits of the plaintiff under the waters of the Delaware River and Delaware Bay are located oyster beds having an area of 50,000 acres in which has been developed and maintained an industry producing four million bushels of oysters annually, having a value of approximately $7,000,000. Of this area 20,000 acres are reserved by plaintiff for the benefit of its citizens for the propagation of seed oysters, and 30,000 acres are leased by plaintiff to and cultivated by its citizens for the growing of oysters for market. This business has been carried on since the original settlement of the country, and, since the year 1799, has been fostered and promoted by statutory enactments and commissions or boards created by the Legislature of the plaintiff and by the concurrent legislation of plaintiff and its sister states across the river and bay. During the past 35 years this industry has more than doubled in volume and value of product. The plaintiff has appropriated and expended therein approximately $1,000,000 and the citizens of the

plaintiff have invested in said industry upwards of $15,000,000.

26. The natural home of the American oyster is close to the mouth of the streams entering the sea, where fresh and salt water mix in approximately equal proportions. The food of the oysters comes primarily from the fresh water. Its enemies, consisting of drills, drum fish, star fish and black mussels, all come from the sea and menace the oyster beds only when the supply of fresh water is reduced and the degree of salinity increases. The oyster industry in the Delaware Bay could not exist except for the supply of fresh water which comes down the Delaware River, the flood waters of which are essential to drive out of the bay the high salinity and the oyster enemies which invade the oyster beds only during low fresh water periods. The plaintiff's oyster beds in Delaware Bay constitute a source of great potential wealth to the State and is the only natural resource in the State which has increased under exploitation by man. Plaintiff is the only State in the Union which has shown a growth in the oyster business in the past 25 years. Except for the natural flow, including floods, in the Delaware River the oyster drills would destroy a million dollars worth of oysters a year in Maurice River Cove (Delaware Bay) alone, and under reduced flow of fresh water these drills have been known to move as much as 15 miles upstream in Delaware Bay. The proposed diversion of waters from the Delaware River would extend the present period of one month of dry weather flow in the Delaware River to a period of approximately five months duration, at the time of year when fresh water is most needed, when the oysters are most susceptible to adverse influences, and when their destructive enemies are most active and effective. The oyster industry is almost the sole means of support for the

larger portion of the population of two entire counties in New Jersey. The oysters produced annually in Delaware Bay, within the territorial limits of the plaintiff, have a food value equivalent to that of 150,000 dressed steers. The oyster beds of the plaintiff are most favorably located, for the most profitable development, with respect to the mixture of salt and fresh waters. It is impracticable to move these oyster beds to meet the changing conditions that will result from any diminution of the flow of fresh water into Delaware Bay. The diversion of water proposed by said City from the headwaters of the Delaware River will substantially change the degree of salinity of the water in the Delaware Bay, and ultimately destroy the oyster industry of the plaintiff and its citizens in the Delaware River and Bay.

27. Since the year 1678 the inhabitants of New Jersey have continuously enjoyed the liberty of fishing in the Delaware River under statutory enactments. During all of that time, shad fishing has been an important and profitable industry. Since 1870 shad fishing in particular has been fostered and regulated by legislation and boards or commissions established and maintained by the plaintiff, and by concurrent legislation of the plaintiff and the adjoining States of Delaware and Pennsylvania. During the past half century the number of shad taken within the territorial limits of the plaintiff has ranged from seventy thousand to more than four million per year, having a value ranging from $175,000 to more than a million dollars per year. As the pollution of the river increased with the growth of the cities along the Delaware River and its tributary, Lehigh River, the number of shad taken gradually decreased. During the past decade these cities have expended large sums of money to reduce the pollution of the river by the construction of sewage disposal plants, and as the pollution de-

creased the shad have returned to the river in increased numbers.

28. The plaintiff has expended large sums of money to provide and maintain hatcheries for the propagation of shad and other kinds of fish within its territorial limits in the Delaware River. During the season of 1927-1928 plaintiff planted in said river 20,745,000 small fry of shad and white and yellow perch.

29. The pollution from the effluent of sewage disposal plants, industrial and mining waste and surface drainage has been dissipated by the natural oxygen and by the flushing effects of flood and semi-flood waters produced by storms in the watershed, which are particularly necessary during the summer months.

30. The diversion of the waters proposed by said City will substantially deprive the river, within the territorial limits of the plaintiff, of the necessary supply of oxygen and said flushing effects and seriously affect, if not destroy, the fishing industry of the plaintiff and its citizens.

31. The Delaware River above tidewater is renowned in art and literature for its scenic beauty and possesses valuable recreational advantages. Between the City of Phillipsburg, New Jersey, and Tri-State Rock these features are especially pronounced, including one of the natural scenic wonders of the United States, known as Delaware Water Gap. In this valley at and above Delaware Water Gap are located many large hotels, boarding houses, camps and country clubs, to which thousands of the citizens of the plaintiff and other states resort annually to enjoy the benefit of the scenery, boating, golfing, fishing and other form of recreation and pleasure. In these enterprises and facilities the citizens of the plaintiff and other states have invested millions of dollars and

their prosperity and usefulness depend upon an adequate supply of water in the Delaware River during the summer months.

32. The proposed diversion of waters from the tributaries of said river will substantially diminish the flow of water in the Delaware River during the summer months and permanently and irreparably injure the property and vested rights of the plaintiff and its citizens and destroy the natural advantages of said valley as a health and recreational resort.

33. The Delaware River basin above tidewater is capable of the feasible development of water power, at a cost less than the ordinary cost of producing commercial power, in excess of 350,000 horsepower (firm power), or in excess of 2,000 million kilowatt-hours per year, of a net value in excess of 18 million dollars per year. A considerable portion of this available power is located within the territorial limits of the plaintiff. A population in excess of nine million people within a radius of fifty miles of the various power sites affords ample market for such power. The diversion of water proposed by said City will forever destroy the opportunity for the feasible commercial development of all, or a considerable proportion, of said water power, including that within the territorial limits of the plaintiff.

34. In connection with the development of said available water power, it is practicable to provide locks and slackwater navigation, of a depth of from twelve to fourteen feet, from tidewater at Trenton to the mouth of the Neversink River at Port Jervis. The proposed diversion will so reduce the navigable capacity of the Delaware River as to destroy the feasibility of carrying out such a development.

35. After the construction of the proposed costly water works of said City of New York in the upper Delaware watershed, the demand of said City for water will constantly increase, and the initial diversion will serve as an entering wedge for future increases in the amount of water to be diverted. Such diversion will be within the exclusive control of the defendants, and will have the effect of substantially reducing the lower Delaware River and Delaware Bay, within the territorial limits of the plaintiff, to a tidal estuary of the sea. Plaintiff will be without any means of ascertaining the amount of such diversion, and without any remedy at law or in equity to relieve or redress the injury to itself or its citizens resulting from such diversion.

36. The present developed sources of water supply of said City have a dependable yielding capacity of 1,200 million gallons per day. Its present consumption is 864 million gallons per day; leaving a surplus of 336 million gallons per day. The City's present consumption of water is in excess of 137 gallons per day per capita, which is a wholly unnecessary and wasteful use of water. Although metering the City's water consumption has been repeatedly recommended by its water engineers since the year 1900, said City has refused and still refuses to establish any system for metering the water used by its consumers. Equity requires the conservation and economical use of the City's water supply before it can (if it ever can) invade the rights and privileges of the plaintiff and its citizens by the diversion of waters from the Delaware River, and thereby destroy or impair the vested legal rights of the plaintiff and its citizens in the flow of said river.

37. Said City has investigated and found available additional sources of water supply in intrastate streams within the State of New York, as follows:

East Hudson areas consisting of eleven streams in Columbia, Rensselaer, Dutchess and Putnam Counties, having an aggregate yield of 434 million gallons per day.

Ground waters in Suffolk County (Long Island) having a yield of 250 million gallons per day.

Rondout Creek, Walkill River, lower Schoharie Creek and other streams in southeastern New York, having an aggregate yield of 750 million gallons per day.

These sources of supply are sufficient with meterage and adequate and proper measures to restrict waste, to meet the needs of the defendant City for the next fifty years. They can be utilized without the diversion of water from one watershed to another and without the diversion of water from the use or benefit of any other state. Said present unused surplus and sources of supply have a dependable yielding capacity of 1,769 million gallons per day.

38. Large additional sources of supply are also available from upper Hudson River and its tributaries wholly within the State of New York, which can be utilized without the invasion of any watershed or supplies affecting the plaintiff or any other state, or in which the plaintiff or any other state has any interest or vested rights.

39. There is no public necessity for the proposed diversion of waters by said City from the tributaries of the Delaware River.

40. Notwithstanding the vast increase in all costs of construction, operation and maintenance that has occurred in the meantime, said City has not changed its water rates since 1856. Nevertheless, said City operates its water system at a profit. In the year 1925 said operation yielded a surplus of more than eight hundred thousand dollars and in the year 1926, said operation yielded a surplus of more than a million dollars. Said defendant now

proposes and threatens to divert the water of said tributaries of the Delaware River and appropriate and convert the same to its own possession and use, to be sold at a profit to itself, and to the great damage and injury of the plaintiff and its citizens.

41. The diversion of said waters is not intended by the defendant City for water ~~power~~ supply alone. It intends to use some or all of said waters for the development of hydro-electric power to the extent of not less than twenty-five million ~~kilowatt~~-hours per annum, upon which it has publicly announced that it expects to realize a net profit of not less than $150,000.00 per annum.

42. The plaintiff is a rapidly growing commonwealth. The greater portion of its population live in the metropolitan areas along the Hudson River, opposite the City of New York, and along the Delaware River at Trenton and at Camden, opposite the City of Philadelphia. The population has increased from less than a million in 1870 to more than three and a half millions at the present time. This growth is due partly to the natural growth of agriculture and industries within the state, but in a larger degree to its favorable geographical location between the great metropolitan areas of New York City, New York, and Philadelphia, Pennsylvania. The greater portion of its area lies within a convenient commuting radius of one hour from New York City or Philadelphia. The net taxable valuation of private property in the State of New Jersey has increased from $701,000,000, in 1891 to $6,000,000,000 in 1928. The ever increasing demands for water supply for the inhabitants and industries of the state, its limited area and the considerable proportion of flat land along tidal streams and ocean, compel the plaintiff to preserve and protect all available sources and supplies of fresh water for the lawful use and benefit of its citizens.

The proposed diversion of waters from Delaware River will deprive plaintiff and its citizens of water which they are legally entitled to have and use for domestic, potable and industrial purposes.

43. At various locations and for great distances adjoining the easterly bank of Delaware River in the state of New Jersey there are extensive areas of rich alluvial bottom lands within and underneath which there is a permanent supply of ground-water available for and which in fact does supply moisture to the roots of agricultural crops and productive plants, insuring large, uniform and unfailing crop production from these lands. The productivity of these lands depends in a large measure upon the maintenance of the ground-water level available to supply moisture to crops thereon at such a depth below the surface as to be within available reach of the plant roots. The ground-water supply under these lands is at such a depth over large areas as to be best adapted to supplying the water requirements of agricultural crops. The ground-water level underneath these lands is maintained and the water in part supplied by the waters of Delaware River. The diversion proposed by the City of New York will lower the level of water in the river and will also lower the level of ground-water under the adjacent lands to the detriment of these lands for crop production, both as to lands situated immediately upon the banks of Delaware River and also as to lands at some distance therefrom but situated at such elevation relative to the river as to benefit by the ground-water supply in and adjoining the river valley. The lowering of the ground-water level underneath these lands will render the moisture supply derived therefrom less readily available to growing crops. The presence of this ground-water table tends to prevent failure of crops during prolonged droughts and to increase the volume of yield of

crops grown on these lands. As a result of reduction in water levels both in the adjacent river and underneath, these lands by the City's diversion, and the consequent reduction in the moisture derived from this ground-water supply, the productivity and value of lands in the state of New Jersey, aggregating not less than 5,000 acres in extent, will be wholly or in part diminished or destroyed.

44. The diversion of all or any substantial portion of water from the watershed in question will measurably, appreciably and substantially diminish the flow of the Delaware River throughout its course both in the tidal and non-tidal portions thereof within the territorial limits of the plaintiff and will cause permanent and irreparable injury to the plaintiff and its citizens.

45. Said proposed diversion will result in great damage to the vested rights and property of the plaintiff and its citizens, for the compensation of which there is no provision or remedy at law, either through proceedings in condemnation or otherwise. Said proposed diversion, if carried out as now threatened by the defendants, will cause great and irreparable damage to vested rights and property of the plaintiff and its citizens for the prevention of which there is no means or remedy save by injunction issued out of this Honorable Court.

46. The dams proposed and threatened to be erected by said City on the said tributaries of the Delaware River will constitute obstructions to the navigable capacity of waters of the United States, to wit the Delaware River, without the affirmative authority of Congress, in violation of the acts of Congress in such case made and provided.

47. Said proposed diversion, and the proposed dams to be constructed for that purpose, will violate an act of Congress known as "The Federal Water Power Act" Ap-

proved June 10, 1920 (41 St. L. 1063) and the amendments thereof.

48. Said proposed diversion will interfere with and regulate the interstate commerce of the plaintiff and its citizens in violation of Article I, Section VIII, paragraphs 3 and 18 and Article VI, paragraph second, of the Constitution of the United States.

49. Said proposed diversion will take the property of the plaintiff and its citizens without due process of law, in violation of Article XIV, Section 1 of the Constitution of the United States.

50. Said proposed diversion will deprive the plaintiff and its citizens, as owners of the bed of Delaware Bay and Delaware River, and as riparian proprietors along and in said river, of the natural, unobstructed and undiminished flow of the waters of said rivers, in violation of the rules of the common law as adopted and applied in and by this court and in and by the courts of the States of New York and New Jersey.

51. Said proposed diversion will disturb and reduce the navigable capacity of, and diminish the volume of waters flowing in, the Delaware River in violation of the acts of Congress in such case made and provided and in violation of Article I, Section 8, paragraph 1, of the Constitution of the United States.

52. Said proposed diversion will otherwise be detrimental to the interests of the plaintiff and its citizens.

53. By said proposed diversion the defendants seek to impose upon the plaintiff, arbitrarily and against its will, a system of division and appropriation of the waters of the Delaware River and its tributaries which can be lawfully adopted or imposed only by voluntary compact between the States with the approval of Congress.

54. Said proposed diversion will create and give a preference to the port of the City of New York, over that of the City of Trenton and other ports of the plaintiff on Delaware River and Delaware Bay, in violation of Article I, Section IX, paragraph 6 of the Constitution of the United States.

55. Said proposed diversion will transfer water in large volume from one great watershed to another; to-wit, from the Delaware River watershed to that of the Hudson River, contrary to the rules of the common law and to the rules of law established and observed in this Court and in the courts of the States of New Jersey and New York.

56. Said proposed diversion will deprive the plaintiff and its citizens of the natural advantages of their position, contrary to the sovereign rights of the plaintiff as a member of the Union.

IV.

In consideration whereof, and for as much as the plaintiff is without adequate remedy in the premises, at and by the strict rules of the common law, and can only obtain relief in this Honorable Court, where matters of this nature are properly cognizable and relievable.

To the end therefore, that the said defendants, State of New York, and The City of New York may to the best and utmost of their respective knowledge remembrances, information and belief, full, true and perfect answer make to all and singular the matters aforesaid, but not under oath, answer under oath being hereby expressly waived.

May it please the court, the premises considered, to grant unto the plaintiff a writ of injunction, issuing out of and under the seal of this Honorable Court to be

directed to the said State of New York and The City of New York, perpetually restraining and enjoining them and each of them, their respective officers, agents and employees, and all other persons acting or claiming or assuming to act under their, or either of their, authority from diverting or abstracting any waters from the Delaware River or from any of its tributaries, and particularly from the Neversink River, Willowemoc River, Beaver Kill, East Branch of the Delaware River and Little Delaware River, or either, or of any part of either, of them.

May it please the court, the premises considered, to grant unto the plaintiff a writ of subpoena, issuing out of and under the seal of this Honorable Court, to be directed to the said defendants, State of New York and The City of New York, commanding them and each of them, by a certain day and under a certain penalty therein to be expressed, to be and appear before your Honors in this Honorable Court, then and there to answer all and singular the said premises, and to stand to abide by, and perform such order and decree therein as to your Honors shall seem meet, and shall be agreeable to equity and good conscience.

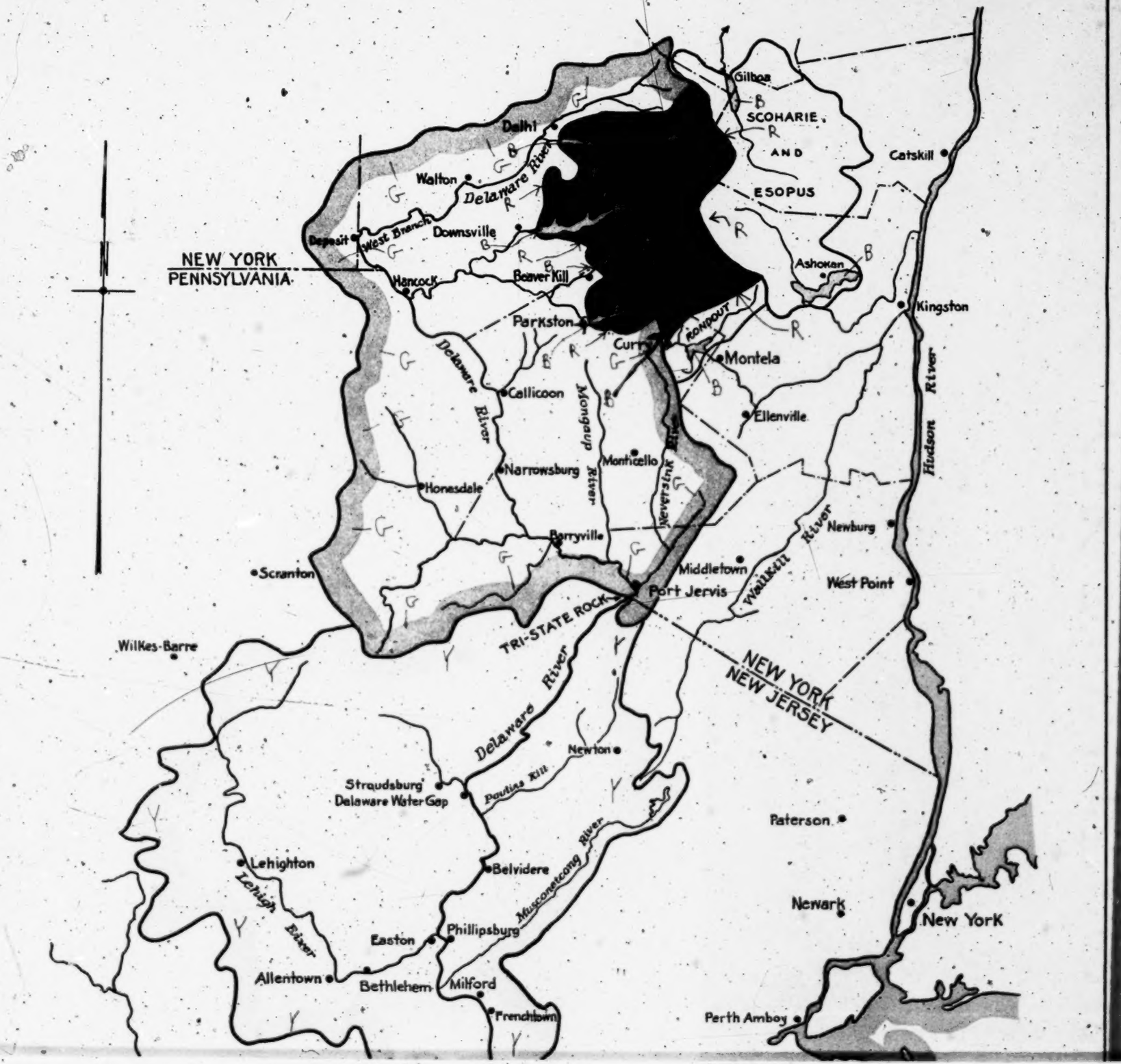
And that the plaintiff may have such further or other relief in the premises as the nature of the case may require, and as shall be agreeable to equity and good conscience.

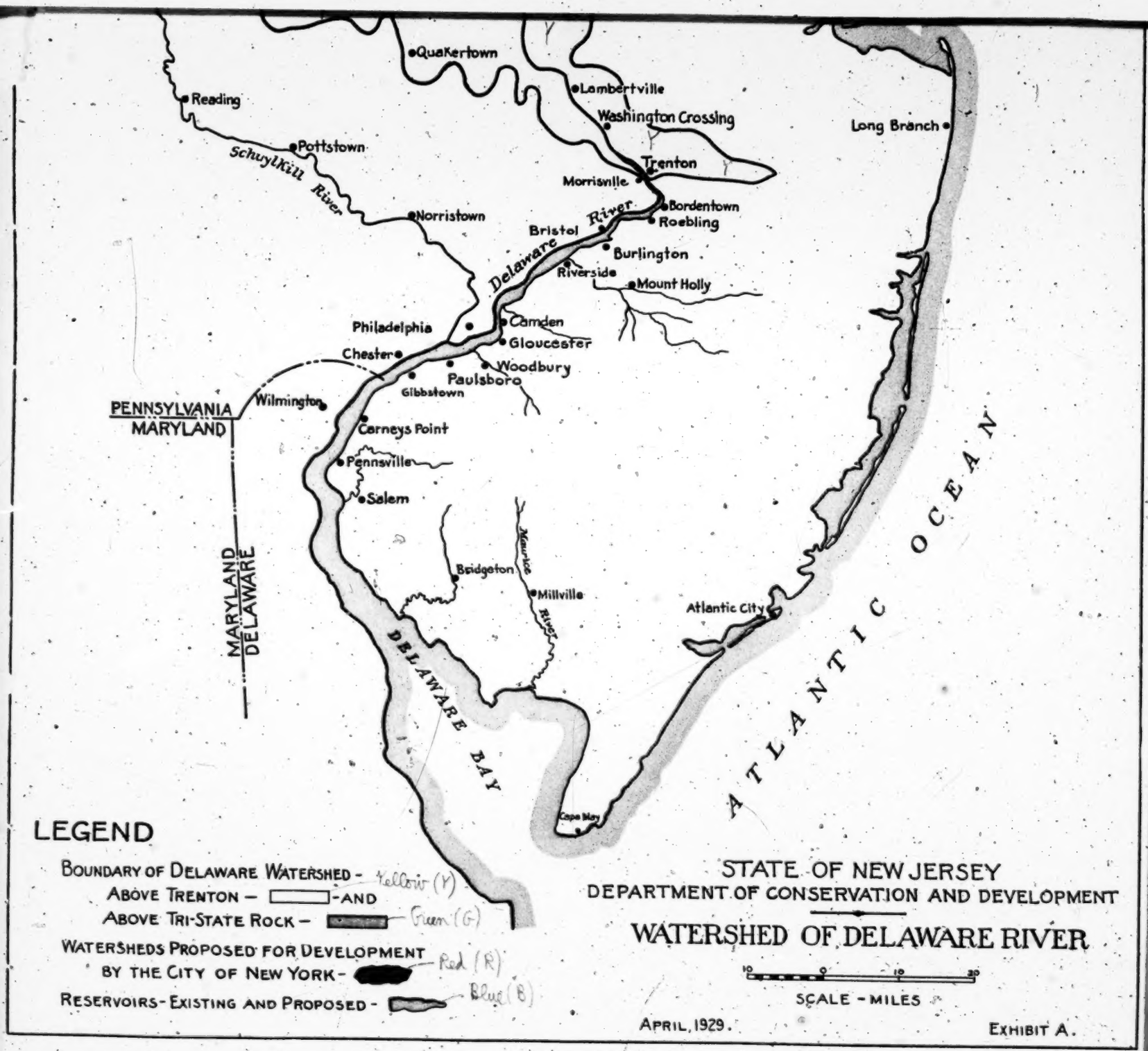
And the plaintiff, as in duty bound, will ever pray, etc.

STATE OF NEW JERSEY,

By WILLIAM A. STEVENS,
Attorney General.

DUANE E. MINARD,
Assistant Attorney General,
Solicitors for Plaintiff.


Gilboa
SCOHARIE
AND
ESOPUS
Catskill
Delhi
Walton
Delaware River
Deposit
West Branch
Downsville
NEW YORK
PENNSYLVANIA
Hancock
Beaver Kill
Ashokan
Kingston
Parkston
Curry
Rondout
Montela
Delaware River
Callicoon
Mongaup River
Ellenville
Hudson River
Monticello
Narrowsburg
Honesdale
Neversink River
Barryville
Newburg
Scranton
Middletown
Port Jervis
Wallkill River
West Point
TRI-STATE ROCK
Wilkes-Barre
NEW YORK
NEW JERSEY
Delaware River
Newton
Stroudsburg
Delaware Water Gap
Paulins Kill
Paterson
Lehighton
Belvidere
Lehigh River
Musconetcong River
Newark
New York
Easton
Phillipsburg
Allentown
Bethlehem
Milford
Frenchtown
Perth Amboy


Quakertown
Reading
Lambertville
Washington Crossing
Long Branch
Pottstown
Schuylkill River
Trenton
Morrisville
Bordentown
Roebling
Norristown
Bristol
Delaware River
Burlington
Riverside
Mount Holly
Philadelphia
Camden
Gloucester
Chester
Woodbury
Paulsboro
Gibbstown
PENNSYLVANIA
MARYLAND
Wilmington
Carneys Point
Pennsville
Salem
MARYLAND
DELAWARE
Bridgeton
Maurice River
Millville
Atlantic City
DELAWARE BAY
ATLANTIC OCEAN
Cape May
LEGEND
BOUNDARY OF DELAWARE WATERSHED -
ABOVE TRENTON - -AND
Yellow (Y)
ABOVE TRI-STATE ROCK -
Green (G)
WATERSHEDS PROPOSED FOR DEVELOPMENT
BY THE CITY OF NEW YORK -
Red (R)
RESERVOIRS - EXISTING AND PROPOSED -
Blue (B)
STATE OF NEW JERSEY
DEPARTMENT OF CONSERVATION AND DEVELOPMENT
WATERSHED OF DELAWARE RIVER
10 0 10 20
SCALE - MILES
APRIL, 1929.
EXHIBIT A.